

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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Dear Mr. MacMillan and Ms. Florini:

We appreciate the opportunity to meet with you by telephone on April 15 to discuss the EDF/ETC redefinition of solid waste proposal. As a follow-up to that meeting, please find below a list of questions that the EPA definition of solid waste rulemaking team would like to have clarified concerning your proposal. The answers to these questions will assist us in determining the impact of your option on the RCRA recycling universe, and allow us to compare it more closely to other stakeholder options which have been submitted. Some of the questions may be redundant with those asked during the telephone conference, but we thought this would give you an opportunity to elaborate on the answers to those questions if needed.

After you have had a chance to review these questions, I think it would be very useful if you could meet with our definition of solid waste rulemaking team to discuss your proposal in more detail. Please contact myself or Charlotte Mooney of my staff to set up that meeting. We look forward to hearing from you in the near future to further discuss redefinition of solid waste options.

Sincerely,

David Bussard, Director
Hazardous Waste Identification Division

Faxback# 14085

Questions Concerning EDF/ETC Redefinition of Solid Waste Proposal

1. As we discussed, we are interested in any more recent data that exists on risks of recycling (i.e., post 1985). Any additional thoughts you have in this area would be helpful.
2. Given the difficulties with defining 'legitimate' recycling, we want to make sure we understand how your proposal addresses this issue. Do we understand correctly that instead of working to improve the definition of legitimate recycling, your goal would be to minimize the differences in regulatory requirements that apply to the two activities, thus making the legitimate recycling vs. treatment distinction unnecessary? To accomplish this, would you consider:
 - For on-site management: allowing an increased accumulation time period and equivalent requirements for both waste that is recycled AND waste that is treated/disposed? (This raises the question of your suggestion to apply financial responsibility requirements to on-site recycling. This would be above and beyond what is currently required for accumulation (storage and treatment)).
 - For intra-company management: allowing reduced requirements for both waste that is to be recycled AND waste that is to be treated/disposed?
 - For product stewardship: allowing reduced requirements for both waste that is to be recycled AND waste that is to be treated/disposed?
 - For off-site recycling: allowing a streamlined permit for both off-site recycling AND off-site treatment (non-thermal)?
3. If one were to set up a system where legitimate recycling was not a determining factor for what regulatory requirements apply, how would you envision applying Toxics-Along-for-the-Ride and recycled products requirements? How would you identify what products the requirements would apply to? All products that use hazardous waste anywhere in the production (recycling) process? Only products sold or marketed? Only products sold to "consumers"?
4. Do you have any further thoughts on how risk assessments for Toxics-Along-for-the-Ride in products should be conducted?
5. One problem we are very concerned about is distinguishing characteristic byproducts from manufacturing intermediates, if you include characteristic byproducts in the regulated universe. The same problem arises with including use/reuse in the regulated

universe. In other words, within a manufacturing plant, how do you distinguish where production using intermediates ends and recycling using by-products begins? Or, similarly, when an activity is production or use/reuse? The way the Transfer-Based option is structured, this line is in effect drawn at the on-site/intra-company boundary (as long as the material is not managed such that it fails one of the conditions). This is not a perfect solution in that the by-product vs. intermediate argument (or use/reuse vs. production argument) will still arise any time the question of whether a process must meet legitimacy comes up, or if we require notification for excluded recycling. Because your approach also brings in characteristic by-products, but would require more substantive requirements for their management, we are concerned that the number of arguments about this question, which will be very difficult to resolve, will be greatly increased. Do you have any thoughts or suggestions about how to address this problem?

6. Concerning compliance with generator requirements for on-site recycling and off-site intra-company recycling; would these requirements apply to any unit that recycles a secondary material? (e.g., if a secondary material is reinserted into a production process to be recycled, would that production process be subject to 262.34?).
7. Do you have any further reactions to the streamlined permit outlined in the January draft proposal?
8. Regarding the management of generator on-site recycling under 262.34 requirements, could containment buildings also be used (in addition to tanks/containers) since they are already allowed under current regulations for generator accumulation purposes and have operational standards in 40 CFR Part 265, Subpart DD?
9. Given that financial assurance, compliance with generator standards, and air emissions controls would be required for accumulation and on-site recycling under your option, would you consider an accumulation time period of more than 180 days, such as one year? We frequently hear from industry that twelve or eighteen months is necessary for some to consolidate materials in order to recycle economically (particularly batch processors).
10. Would you consider an increased accumulation time period for generators who send their wastes off-site for recycling? We often hear from industry that in cases where off-site recycling opportunities are further away than disposal opportunities, high less-than-truckload transportation costs inhibit recycling.
11. Our initial understanding in looking at your proposal was that it would increase the regulatory requirements for some recycling (compared to the current system).

Specifically, it seems that generator accumulation standards, air emissions requirements, and financial responsibility would newly apply to recycling units both on- and off-site. As you know, this would not be reducing regulatory barriers to environmentally sound recycling. Do we understand correctly that it is your belief that regulations should not be structured to encourage (or discourage) recycling over treatment and disposal, but to allow only other factors to drive this decision (e.g., financial and technical factors)?

12. Could you elaborate more on what you mean by “develop more objective criteria for case-by-case exclusion decisions” (second to last paragraph, page 8)?
13. Concerning your one-time notification requirement for on-site recycling, would this apply only to new entities who become regulated under the redefined solid waste universe and plan to conduct on-site recycling, or to all entities even if they are currently recycling on-site?
14. We recognize that your draft sets out a general framework for product stewardship and the details still need to be developed. We would like to discuss the following questions with you on how a product stewardship scheme might work:
 - What types of recycling scenarios do you see being consistent with your definition of product stewardship?
 - Does the manufacturer have to recycle the unused products/secondary materials retrieved from customers, or could they manage the materials as wastes as well?
 - Could the "manufacturer" be any manufacturer in the chain of custody (e.g., a formulator, toll manufacturer, distributor), or even another manufacturer of the same material?
 - What benefits do you see from the "retaining title" requirement?
 - What are your concerns with allowing a manufacturer to contract with a third party for the recycling?
 - Would each location (both the generator and the off-site intra-company recycling location the recyclable material is sent to) get the full 180 days to accumulate hazardous wastes, or do you mean that all accumulation on-site, transfer to intra-company off-site location, and recycling itself must all occur within 180 days?
 - How do you see manufacturers reacting to the product stewardship requirement that they must be accountable for generators of secondary materials managing their materials in compliance with the generator standards? What would that mean in terms of enforcement if a spill or violation is found at the generator's facility?
 - Any further thoughts on different approaches for post-consumer type product stewardship vs. industrial product stewardship would also be helpful.

15. When you state that on-site thermal recycling would require a permit, we assume you mean a full RCRA Subtitle C permit and not some type of streamlined permit? And the same for off-site thermal recycling?